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PART II—Section 2

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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिसे कि यह ग्रन्थ संकलन के रूप में रखा जा सके।

Separate paging is given to this Part in order that it may be filed as a separate compilation.

LOK SABHA

The following Bill was introduced in Lok Sabha on 24th March 1975:—

BILL No. 25 OF 1975

A Bill further to amend the Provident Funds Act, 1925.

Be it enacted by Parliament in the Twenty-sixth Year of the Republic of India as follows:—

1. (1) This Act may be called the Provident Funds (Amendment) Act, 1975.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. After section 6 of the Provident Funds Act, 1925 (hereinafter referred to as the principal Act), the following section shall be inserted, namely:—

'6A. (1) In this section, unless the context otherwise requires,—

(a) "Central Government officer" means a subscriber to, or depositor in, a contributory provident fund constituted by the Central Government, who, immediately before his retirement, is a member of a Central Service Class I, but does not include an officer appointed under a contract of service for a specified term;

(b) "commercial employment" means employment in any capacity (including that of an agent) under any company, co-

Short title and commencement.

Insertion of new section 6A.

Withholding or recovery of Government contributions in case of Central Government

officers taking up, without prior permission, commercial employment within two years of their retirement.

operative society, firm or individual engaged in trading, commercial, industrial, financial or professional business and includes also—

(i) a directorship of a company;

(ii) the holding of any office, whether elective or otherwise, such as that of president, chairman, manager, secretary, treasurer, by whatever name called in a co-operative society; and

(iii) the setting up of practice, either independently or as partner of a firm, as adviser or consultant in matters in respect of which the Central Government officer,—

(A) has no professional qualifications and the matters in respect of which the practice is to be set up or is carried on are relatable to his official knowledge or experience, or

(B) has professional qualifications, but the matters in respect of which such practice is to be set up are such as are likely to give his clients an unfair advantage by reason of the posts held by him under the Central Government, or

(C) has to undertake work involving liaison or contact with the offices or officers of Central Government,

but does not include employment in or under a corporation or company wholly or substantially owned or controlled by Government or employment in or under a body controlled or financed wholly or substantially by Government;

(c) "Government contributions" means contributions made after the commencement of the Provident Funds (Amendment) Act, 1975, in respect of any period after such commencement, by the Central Government or by a State Government or by a local authority within the meaning of the Local Authorities Loans Act, 1914;

9 of 1914.

(d) "prescribed" means prescribed by rules made by the Central Government by notification in the Official Gazette.

(2) No Central Government officer shall have any right to the Government contributions made to his credit in a contributory provident fund in any case where he takes up commercial employment at any time before the expiry of two years from the date of his retirement without the prior permission of the Central Government.

Explanation 1.—For the purposes of this sub-section and sub-section (7), "date of retirement" in relation to a Central Government officer re-employed after retirement without any break either in the same or any other Class I post under the Central Government or any other equivalent post under a State Government, shall mean the date on which such Central Government officer finally ceases to be re-employed in Government service.

Explanation 2.—A Central Government officer permitted by the Central Government to take up a particular Commercial employment

during his leave preparatory to retirement shall be deemed, for the purposes of this sub-section, to have obtained prior permission of the Central Government for his continuance in such employment after retirement.

(3) Subject to the provisions of sub-section (4), the Central Government may, by order in writing, on an application made in the prescribed form by a Central Government officer, grant, subject to such conditions, if any, as it may deem necessary, permission, or refuse, for reasons to be recorded in the order, permission, to such officer to take up the commercial employment specified in the application.

(4) In granting or refusing permission under this section to a Central Government officer for taking up any commercial employment, the Central Government shall have regard to the following factors, namely:—

- (a) the nature of the employment proposed to be taken up and the antecedents of the employer;
- (b) whether his duties in the employment which he proposes to take up might be such as to bring him into conflict with Government;
- (c) whether the officer while in service had any such dealing with the employer under whom he proposes to seek employment as might afford a reasonable basis for the suspicion that such officer had shown favours to such employer;
- (d) any other relevant factors which may be prescribed.

(5) Where within a period of sixty days of the date of receipt of an application under sub-section (3), the Central Government does not refuse to grant the permission applied for or does not communicate the refusal to the applicant, the Central Government shall be deemed to have granted the permission applied for.

(6) Where the Central Government grants the permission applied for subject to any conditions or refuses such permission, the applicant may, within thirty days of the receipt of the order of the Central Government to that effect, make a representation against any such condition or refusal and the Central Government may make such orders thereon as it deems fit:

Provided that no order other than an order cancelling such condition or granting such permission without any conditions shall be made under this sub-section without giving the person making the representation an opportunity to show cause against the order proposed to be made.

(7) If any Central Government officer takes up any commercial employment at any time before the expiry of two years from the date of his retirement without the prior permission of the Central Government or commits a breach of any condition subject to which permission to take up any commercial employment has been granted to him under this section, it shall be competent for the Central Government to declare by order in writing and for reasons to be recorded therein that he shall not be entitled to such part of the Government contributions made in relation to such officer as may be

specified in the order and if he has received payment thereof, to direct that he shall refund to the Central Government an amount equivalent to such part of the Government contributions:

Provided that no such order shall be made without giving the officer concerned an opportunity of showing cause against such declaration or direction:

Provided further that in making any order under this sub-section, the Central Government shall have regard to the following factors, namely:—

- (i) the financial circumstances of the officer concerned;
- (ii) the nature of, and the emoluments from, the commercial employment taken up by the officer concerned;
- (iii) such other relevant factors as may be prescribed.

(8) Any amount required to be refunded by an order under sub-section (7) may, if it is not refunded within the prescribed period, be recovered as arrears of land revenue.

(9) Every order passed by the Central Government under this section shall be communicated to the officer concerned.

(10) The provisions of this section shall have effect notwithstanding anything to the contrary contained in any other provision of this Act or the rules applicable to any contributory provident fund.

(11) Every rule made by the Central Government under this section shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.'

Amend-
ment of
section 8. 3. In sub-sections (1) and (2) of section 8 of the principal Act, after the words "provisions of this Act", the brackets, words, figure and letter "(except section 6A)" shall be inserted.

STATEMENT OF OBJECTS AND REASONS

At present every retired Central Service Class I officer entitled to pension is prohibited from taking up commercial employment before the expiry of two years from the date of his retirement unless he obtains the previous sanction of the President for taking up such employment. If such a pensioner accepts any commercial employment without the previous sanction of the President, no pension is payable to him in respect of any period for which he is so employed or for such longer period as the President may direct. [Vide rule 10 of the Central Civil Services (Pension) Rules, 1972.]

2. In the interests of purity of administration, it is considered necessary to impose similar restrictions, with suitable safeguards, in the case also of members of Central Services Class I entitled to the benefits of a Contributory Provident Fund. For this purpose, the Bill seeks to amend the Provident Funds Act, 1925.

3. The Bill seeks to achieve the above object.

NEW DELHI;

The 13th February, 1975.

PRANAB MUKHERJEE.

PRESIDENT'S RECOMMENDATION UNDER ARTICLE 117 OF THE
CONSTITUTION OF INDIA

[Copy of U.O. No. 37(6)-E.V.(B)/70, dated the 28th February, 1975 from Shri Pranab Kumar Mukherjee, Minister of State in the Ministry of Finance to the Secretary-General, Lok Sabha.]

The President having been informed of the subject matter of the Provident Funds (Amendment) Bill, 1975, recommends the introduction of the Bill in Lok Sabha under clause (1) of article 117 of the Constitution of India.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 2 of the Bill seeks to insert a new section 6A in the Provident Funds Act, 1925. The new section provides for the withholding or recovery of contributions made by Government to the credit of an officer of a Central Service Class I in a contributory provident fund in the event of such officer taking up, within two years of his retirement, commercial employment without obtaining the prior permission of the Central Government. The section provides for the making of rules by the Central Government with regard to the following matters:—

- (a) form of application for permission to take up commercial employment [new section 6A(3) read with sub-section (1) (d) of the section];
- (b) factors to which the Central Government shall have regard in granting or refusing such permission [new section 6A(4) (d) read with sub-section (1) (d) of the section];
- (c) factors to which the Central Government shall have regard for determining the part of the Government contributions to which an officer shall become disentitled by reason of his taking up such employment without prior permission of Government [new section 6A(7), second proviso clause (iii) read with sub-section (1) (d) of the section]; and
- (d) the period within which amounts required to be refunded by a retired Government officer under sub-section (7) of new section 6A shall be refunded [new section 6A(8) read with sub-section (1) (d) of the section].

The matters referred to in (a) and (d) above are matters of form or detail. As regards matters mentioned in (b) and (c) above, it may be mentioned that all the factors which can be visualised have already been expressly provided for and power is being taken to prescribe other factors by way of abundant caution to cover situations which it is not practical to visualise at the moment. It is, however, made clear that only such additional factors as are relevant can be prescribed. Provision has also been made for the laying of rules made under the new section before Parliament. The delegation of legislative power is, therefore, of a normal character.

S. L. SHAKDHER,

Secretary-General